

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Mauern Jerome Ashford,

Plaintiff,

Hon. Hugh B. Scott

-v-

07CV191
(Consent)

ORDER

Glenn Goord, et al.,

Defendants.

Pending before the Court are the following motions: plaintiff's motion for a temporary restraining order and to expedite (Docket Nos. 68 and 69); plaintiff's motion to consolidate this case with *Ashford v. Superintendent of Auburn Correctional Facility*. 08CV393 (Docket No. 81); and the defendants respective motions to dismiss the complaint (Docket Nos. 85 and 88).

In an Order dated December 21, 2009, the plaintiff was directed to respond to the initial motion to dismiss filed by defendants (Docket No. 85) by January 15, 2010. (Docket No. 87). The December 21, 2009 Order also included notice pursuant to Irby v. New York City Transit Authority, 262 F 3d 412 (2d Cr 2001) explaining the nature of the motion and the need for the plaintiff to respond. The notice also advised the plaintiff, in capital letters, that the complaint in this matter may be dismissed if he failed to respond. See (Docket No. 77). The plaintiff failed to submit any response to the this motion. In an Order dated January 9, 2010, the plaintiff was directed to respond to the second motion to dismiss filed by defendants (Docket No. 88) by January 29, 2010. (Docket No. 90). Once again, the January 9, 2010 Order included language

pursuant to Irby, and again advised the plaintiff, in bold all capital letters, that the complaint in this matter may be dismissed if he failed to respond. (Docket No. 90). The plaintiff has failed to respond to the motion or otherwise contacted the Court. The defendants state that they have not received any response to the instant motions as well. (Docket No. 92).

Under the circumstances of this case, the plaintiff is deemed to have abandoned his claims in this matter. The complaint is dismissed based upon the plaintiff's failure to prosecute this action pursuant to Rule 41 of the Federal Rules of Civil Procedure.

The pending motions are denied as moot.

So Ordered.

/s/ Hugh B. Scott
United States Magistrate Judge
Western District of New York

Buffalo, New York
March 17, 2010